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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175319
Party	Defendant DaVinci Radiology Associates, P.L.
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Submission	Motion to Strike
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Date	06/11/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

APPLICANT'S MOTION TO STRIKE OPPOSER'S SECOND REPLY BRIEF

Applicant DaVinci Radiology Associates, P.L. ("Applicant"), respectfully moves the Trademark Trial and Appeal Board (the "Board") to strike the second Reply in Support of Motion for Summary Judgment, dated May 30, 2008 (the "Second Reply Brief"), of Opposer Intuitive Surgical, Inc. ("Opposer"), and hereby submits its memorandum brief in support of its motion to strike.

A reply brief, if filed, shall not exceed 10 pages in length in its entirety. 37 CFR §2.127(a). This page limitation applies to reply briefs on summary judgment motions. *See*, 37 CFR §2.127(a) and *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003). On a motion for summary judgment, a reply brief is due within 15 days from the date of service of the brief in response to the motion for summary judgment. 37 CFR §2.127(e)(1). The time to file a reply brief on a motion for summary judgment will not be extended. *Id.* No further papers will be considered. *Id.* The Board will not consider briefs that exceed the page limitation, nor will the Board dissect a party's brief to bring it within the

allowable page limit. *See*, 37 CFR §2.127(a) and (e) and *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003).

Here, Opposer's first Reply in Support of Summary Judgment, dated May 23, 2008 (the "First Reply Brief"), is the last paper the Board may consider. It exceeded the page limitations for a reply brief by eight (8) pages and must be stricken. Opposer untimely filed a fourth paper, the Second Reply Brief, in connection with its summary judgment motion. Therefore, the Board must strike the Modified Reply Brief because it cannot consider any other paper after the First Reply Brief, and it was filed more than 15 days after Applicant's Response to Opposer's motion for summary judgment. Wherefore, Applicant respectfully moves the Board to strike the Second Reply Brief.

Respectfully submitted,

A handwritten signature in black ink, reading "Matt Vanden Bosch", written over a horizontal line.

Dated: June 11, 2008

Matthew T. Vanden Bosch
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CERTIFICATE OF SERVICE

Intuitive Surgical, Inc. v. DaVinci Radiology Associates, P.L.
Opposition No. 91175319

On June 11, 2008, I hereby certify that I served a copy of Applicant's Motion to Strike Opposer's Second Reply Brief

By U.S. Mail to:

Michelle J. Hirth, Esq.
Embarcadero Four, 17th Floor
San Francisco, California 94111

Executed on June 11, 2008, at Boynton Beach, Florida.

A handwritten signature in black ink, reading "Matt Vanden Bosch", written over a horizontal line.

Matthew T. Vanden Bosch